IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/08/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.3506 OF 1998

The Management of Dheeran
Chinnamalai Transport Corporation
Ltd., (Now known as the Tamil Nadu
Transport Corporation (Kumbakonam
Division-II Ltd.,)
Periymilaguparai,
Tiruchirapalli 620 001
rep. by its Managing Director. .. Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. C. Jambunathan,
S/o. A. Chandrasekaran,
15, Agraharam, Puvalur,
Lalgudi Taluk,
Tiruchirapalli District
Pin-621 712. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Ms. Narmada Sampath for
Mr.Vijay Narayan

For Respondent-2 : Mr.A. Saravanan

:J U D G M E N T

The present writ petition has been filed on behalf of the Management against the award of the Presiding Officer, Labour Court in Industrial Dispute No.476/95, setting aside the order of dismissal of respondent No.2 from the service and directing that fresh appointment should be made.

2. Respondent No.2 was working under Cheran Transport Corporation from 1981 till February 1991 and thereafter he was transferred to work under the present petitioner. Subsequently, a charge memo was issued on 22.2.1992 alleging that he had received Rs.34/- from two passengers and issued two tickets bearing Nos.46064 and 46065. He has indicated in the ticket that Rs.5/- has been received towards luggage and thus misappropriated a sum of Rs.12/- for himself. Respondent No.2 denied the charge and subsequently a domestic enquiry was held. Having found guilty in the domestic enquiry, after issuing second show cause, respondent No.2 was dismissed from service on 1.6.1992. Appeal filed by the respondent No.2 before the departmental authorities was also dismissed. Thereafter the respondent No.2 raised Industrial Dispute No.476 of 1995 contending that domestic enquiry had not been held properly and at any rate the order of dismissal should not have been passed.

3. In the counter filed on behalf of the Management, it was contended that the enquiry had been held properly and the respondent No.2 had changed the invoice and altered the journey ticket indicating as if it was for the luggage and thus misappropriated a sum of Rs.12/- and a false document had been prepared.

4. The Presiding Officer, Labour Court framed the following issues :-

 1. Whether the domestic enquiry conducted by the management against the petitioner had been conducted according to law and natural justice ?

2. Whether the charges framed against the petitioner had been proved ?

3. Whether the punishment imposed on the petitioner is justifiable ?

4. Whether the petitioner is entitled to get the relief under Section 11-A of the Industrial Disputes Act ?

5. Under issue No.1, it was held that domestic enquiry had been held in accordance with law and natural justice. Under issue No.2, it was held that the charge framed against the petitioner had been proved. Under issue No.3, while coming to the conclusion that even earlier the workman used to correct journey tickets at times, it was concluded that the punishment was disproportionate and observed that a lenient view should be taken as the parents of the workman and other family members were dependents upon him. Under issue No.4, it was observed

 . . . that the petitioner is not entitled to be reinstated in service with continuity of service, backwages and other benefits and that the management should appoint him newly in the job in which he had been working already and the Issue No.4 is answered accordingly.

6. Learned counsel appearing for the petitioner has submitted that after having found the respondent No.2 guilty of the charges which

related to misappropriation as well as falsification of documents, the Labour Court has committed a grave error of law in directing that fresh appointment should be given to the respondent No.2, particularly after coming to the conclusion that similar misdemeanors have been committed by the workman on earlier occasions. Learned counsel for the petitioner has placed reliance upon a decision of the Supreme Court reported in 2000(1) LLN 893 (KARNATAKA STATE ROAD TRANSPORT CORPORATION v. B.S. HULLIKATTI) and a Division Bench of this Court reported in 2003(2)LLN 642 (V. KASI v. PANDIAN ROADWAYS CORPORATION LTD., MADURAI AND ANOTHER).

7. Learned counsel appearing for the respondent No.2 on the other hand contended that the Presiding Officer, Labour Court having exercised jurisdiction under Section 11A of the Industrial Disputes Act by considering all the relevant factors, such order should not be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

8. A perusal of the reasoning given by the Presiding Officer, Labour Court indicates that the fact that workman had to support a large family consisting of his parents, wife and children was considered as an extenuating circumstance for setting aside the order of dismissal and directing that fresh appointment should be given. Even though the Presiding Officer, Labour Court was cognisant of the fact that similar misdemeanors had been committed on earlier occasions, it has conveniently ignored such past conduct. It is to be noticed that the charge relate to misappropriation as well as falsification of documents. Considering the seriousness of the charge, which had been proved, and considering the fact that similar misdemeanors had been committed on several occasions earlier, the order of the Labour Court cannot but be characterised as an extreme case of misplaced sympathy.

9. Compared to the misdemeanors in the present case, the misdemeanors for which workman had been dismissed in the decision reported in 2 003(2) LLN 642 (cited supra) were obviously less serious and yet the Division Bench found that the order of the learned single Judge reversing the decision of the Labour Court and restoring the order of dismissal was justified.

10. It is of course true that discretion has been vested with the Labour Court under Section 11A of the Industrial Disputes Act to interfere with the punishment, but it is well settled that such discretion must be exercised by the Labour Court judiciously by considering all the relevant facts and circumstances of the case. When falsification followed by misappropriation is established and there is material to show that similar misdemeanors had been committed earlier, there can be no occasion for the Labour Court, or for that matter the High Court, to take any lenient view in the matter and taking any such lenient view would be a glaring example of misplaced sympathy.

11. It is to be noted that inspite of such serious

misdemeanors, respondent No.2 has already received some □dividends□ by way of payment of arrear wages as well as continued payment of wages by virtue of the provisions contained in Section 17B of the Industrial Disputes Act. Respondent No.2 should thank his stars that he has received such benefit because of the benevolent provision contained in Section 17B notwithstanding the seriousness of the charge which had been proved to the list. Respondent No.2 has already received enough undue and undeserving benefit.

12. For the aforesaid reasons, the writ petition is to be allowed and the order passed by the Presiding Officer is quashed. There will be no order as to costs.

Index : Yes
Internet : Yes
dpk/ksr

To

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